

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHN HULBERT COWGILL,
Beneficiary John Hulbert Cowgill,
on behalf of the Private Foreign Trust,

Plaintiff,

v.

CIV 17-0242 JB/KBM

PATRICK J. BURKE, President and Chief
Executive Officer for HSBC BANK USA,
N.A. as Trustee for Wells Fargo Asset
Securities Corporation, Mortgage Pass-
Through Certificates, Series 2007-7,

Defendant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER is before the Court *sua sponte*, pursuant to the Order to Show Cause issued June 30, 2017 (*Doc. 13*), and the Honorable James O. Browning's Order of Reference (*Doc. 12*), filed June 23, 2017.¹ In the Order to Show Cause, this Court noted that the case is subject to dismissal without prejudice because Plaintiff has not properly served Defendant. *See Doc. 13* at 3 (citing Fed. R. Civ. P. 4(m) and 28 U.S.C. § 1448, which together require that after notice to the plaintiff, the Court "must" dismiss the action without prejudice if a defendant is not served within 90 days of the filing of the notice of removal). Accordingly, the Court required Plaintiff to properly serve Defendant, or to show cause as to why service had not been made, on or before July 14, 2017. *Doc. 13* at 4. The Court explicitly cautioned Plaintiff that failure to do so would result in a recommendation to Judge Browning that this action be dismissed without prejudice. *Id.*

¹ In the Order of Reference, Judge Browning directed me "to conduct hearings, if warranted, including evidentiary hearings, and to perform any legal analysis required to recommend to the Court an ultimate disposition of the case." *Doc. 12*.

The July 14 deadline has come and passed, yet Plaintiff has neither served Defendant, nor offered an explanation as to why proper service has not been made. Accordingly, Plaintiff has manifested a lack of interest in properly litigating this matter in accordance with the Federal Rules of Civil Procedure.

Wherefore,

IT IS HEREBY RECOMMENDED that Plaintiff's action be dismissed without prejudice.

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition, they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**


UNITED STATES CHIEF MAGISTRATE JUDGE